

MAY 6 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON

U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

LEONARDO MARTINEZ-LORENZO,

Defendant - Appellee.

No. 02-50336

D.C. No. CR-01-01102-WMB

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
William Matthew Byrne, Senior Judge, Presiding

Argued and Submitted April 11, 2003
Pasadena, California

Before: SCHROEDER, Chief Judge, GRABER, Circuit Judge, and SINGLETON**,
District Judge.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable James K. Singleton, District Judge for the U.S. District of Alaska, sitting by designation.

The government appeals the district court's grant of an eleven-month downward departure in defendant Leonardo Martinez-Lorenzo's sentence. We vacate the sentence and remand for resentencing.

The district court has discretion in deciding to depart from the Sentencing Guidelines in certain circumstances. See United States v. Koon, 518 U.S. 81, 98-99 (1996). We conclude that the district court did not abuse its discretion in determining that the defendant's personal rehabilitation from his prior offense and his low likelihood of reoffending justify a downward departure.

The district court reached the range permitting a thirty-month sentence, however, by departing on both the criminal history axis and the offense level axis. The appropriate departure on the basis of likelihood of recidivism is only in the criminal history category, not the offense level. See United States v. Martin, 278 F.3d 988, 1003 (9th Cir. 2002). Nothing in the district court's analysis supports a departure on the offense level axis. We therefore must VACATE Martinez-Lorenzo's sentence and REMAND for resentencing.